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In The

Supreme Court of the United States

October Term, 1995

GARY EDWARDS and TANA WOOD,

Petitioners,

v.

JERRY B. BALISOK,

Respondent.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

BRIEF BY CALIFORNIA, ALASKA, ARIZONA, COLORADO, CONNECTICUT, DISTRICT OF COLUMBIA, FLORIDA, KANSAS, MISSISSIPPI, MONTANA, NEBRASKA, NEVADA, NEW YORK, OKLAHOMA, PENNSYLVANIA, SOUTH CAROLINA, AND VIRGINIA, AS AMICI CURIAE SUPPORTING THE PETITIONERS

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QUESTION PRESENTED

In *Heck v. Humphrey*, 512 U.S. ___, 114 S.Ct. 2364 (1994) this Court held that habeas corpus is the exclusive remedy for a state prisoner who challenges the fact or duration of confinement and that a prisoner may not bring an action for damages under 42 U.S.C. § 1983 if it would necessarily imply the invalidity of the prisoner's conviction or sentence.

Does this Court's ruling in *Heck v. Humphrey* bar a § 1983 action brought by a prisoner challenging prison disciplinary procedures under the Due Process Clause that would necessarily imply the invalidity of the prisoner's loss of good time.

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INTEREST OF THE AMICI CURIAE

This brief is filed pursuant to Supreme Court Rule 37.5, on behalf of the State of California and the other signature states ("the Amici States") through their attorneys general, in support of the Petitioners who are prison officials of the Washington State Department of Corrections. The Amici States have an important interest in this case because they all operate correctional facilities, and must safely maintain discipline and order among their prison populations.

The fundamental rights at issue in this case are federalism and comity. The states have a paramount interest in addressing and correcting errors of constitutional significance in prison administration. "It is difficult to imagine an activity in which the state has a stronger interest, or one that is more intricately bound up with state laws, than the administration of its prisons. The strong considerations of comity that require giving a state court system that has convicted a defendant the first opportunity to correct its own errors thus also require giving the states the first opportunity to correct the errors made in the internal administration of their prisons." *Preiser v. Rodriguez*, 411 U.S. 475, 492 (1973).

In *Preiser*, this Court held that habeas corpus is the exclusive remedy for a prisoner challenging the fact or duration of his confinement, or immediate or speedier release from custody, even though the claim could literally fall within the terms of § 1983. *Preiser v. Rodriguez*, 411 U.S. at 488-490. By its terms, *Preiser* requires prisoners seeking the restoration of sentence reduction credits lost in prison disciplinary actions to proceed by way of habeas with the attendant exhaustion of state remedies. *Preiser*, 411 U.S. at 500.

Heck v. Humphrey, 512 U.S. ___, 114 S.Ct. 2364 (1994), holds that even though a prisoner seeks damages,

a cause of action under § 1983 does not arise until the prisoner has demonstrated the invalidity of his confinement in some other proceeding. The question that remains unanswered after *Preiser* and *Heck*, and the one Amici seek the Court to answer in this case, is whether it is the nature of a prisoner's claim or the relief a prisoner seeks that determines whether the claim is one for habeas corpus or instead is cognizable in an action pursuant to § 1983.

The Amici seek a ruling from this court that the nature of a prisoner's claim, not the relief he seeks, determines whether a claim is for habeas corpus or cognizable in an action under § 1983, and that procedural or substantive due process challenges to prison administrative proceedings are cognizable in federal habeas corpus. Only after administrative action taken against a state prisoner terminates in a prisoner's favor, does a damages claim for a procedural or substantive due process violation accrue under § 1983.

SUMMARY OF ARGUMENT

The remedial schemes provided by the states for prisoners to redress claims of error in the prison administrative hearing process provide a meaningful forum for constitutional claims. All the states have functional prison administrative grievance procedures. State courts are capable of enforcing the Constitution, and impose procedures in prison disciplinary cases that exceed those required by the Due Process Clause.

Civil rights actions and writs of habeas corpus are not fungible remedies, and habeas corpus is the preferred remedy to redress a due process claim. When a prisoner contests prison administrative action on due process grounds, the primary objective of the litigation should be to correct error in the process or the result. In such circumstances an award of damages to the prisoner is a secondary consideration. The nature of the claim asserted, not the relief sought by a prisoner, determines whether the claim is one for a civil rights violation, or instead is cognizable in habeas corpus. Claims of procedural or substantive due process violations are particularly suitable for resolution by courts in habeas corpus proceedings.

A holding that a prison administrative determination must be found invalid in some proceeding before a damages claim based upon procedural or substantive due process accrues to a prisoner, strikes a proper balance between the states' concerns for comity and federalism and prisoners' rights to seek compensation for injury. There will be no resulting injustice when prisoners are required to prove error in an administrative appeal, state judicial proceeding or federal habeas corpus before suing for damages. The remedy provided in state administrative review, the state courts or federal habeas corpus proceedings is just as

valuable as a declaratory judgment in a civil rights action or an award of nominal damages. When an adequate remedy exists under 28 U.S.C. § 2254, there is no need for prisoners to pursue immediate civil rights relief under § 1983.

A rule that a procedural or substantive due process claim does not accrue under the civil rights act until a proceeding has terminated in favor of a prisoner will afford the states a fair and reasonable opportunity to correct errors in administrative hearings in state prisons, promote the orderly administration of justice, conserve judicial resources and ensure a meaningful remedy to aggrieved prisoners.

ARGUMENT

I.

THE STATES HAVE REMEDIAL SCHEMES THAT CAPABLY ADDRESS CLAIMS OF ERROR IN PRISON ADMINISTRATIVE HEARINGS.

Article VI of the United States Constitution declares that the constitution is "the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." This Court has regularly observed, since the earliest days of our republic, that state courts have the ability, integrity and responsibility to safeguard individual liberties and uphold federal law. *Martin v. Hunter's Lessee*, 1 Wheat. 304, 341-347 (1816). See also, *Duckworth v. Serrano*, 454 U.S. 1, 3-4 (1981); *Allen v. McCurry*, 449 U.S. 90, 105 (1980); *Stone v. Powell*, 428 U.S. 465, 494 n.35 (1976); *Huffman v. Pursue Ltd.*, 420 U.S. 592, 611, *reh'g denied*, 421 U.S. 971 (1975).

At times, the federal courts have been described as more sensitive and understanding of federal rights than state courts. *Preiser v. Rodriguez*, 411 U.S. at 514 (Brennan, J., dissenting). However, the states provide extensive remedial schemes for aggrieved prisoners, and state decisional law often prescribes rights to prisoners that exceed those required by the constitution.

In oversight of prison disciplinary proceedings, State courts protect constitutional rights, and on occasion have imposed requirements on prison officials that exceed the measures required by the constitution. For example, California and Louisiana courts reviewed prison disciplinary cases for evidence of guilt before this court

handed down the "some evidence" rule of *Superintendent v. Hill*, 472 U.S. 445 (1985). See, *In re Spence*, 36 Cal.App.3d 636 (1974); *Sanchez v. Hunt*, 329 So.2d 691 (1976). Alaska courts require that prison disciplinary hearings be tape recorded. *McGinnis v. Stevens*, 543 P.2d 1221 (Alaska 1975). In Arizona a prisoner's due process rights are violated if his representative in a disciplinary hearing is questioned about the case without prior notice. *Arizona v. Melendez*, 172 Ariz. 68, 834 P.2d 154 (1992). Inmates have a right to be assisted by counsel in disciplinary proceedings in Hawaii. *Hawaii v. Alvey*, 67 Haw. 49, 678 P.2d 5 (1984). Idaho requires that prison officials demonstrate the chain of custody for physical evidence relied upon in disciplinary hearings. *Bourgeois v. Murphy*, 119 Idaho 611 (1991). Iowa inmates must be provided a written statement of reasons why their requested witnesses will not be called in a disciplinary hearing. *Kelly v. Nix*, 329 N.W.2d 287 (Iowa, 1983). In New York, prison disciplinary decisions will be upheld if there is "substantial evidence" of guilt. *People ex rel. Vega v. Smith*, 66 N.Y.2d 130 (1985.)[1/]

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1. Other decisions of state courts affording inmates greater protection than constitutionally required are, *Clark v. Maine Dept. of Corrections*, 463 A.2d 762 (Maine 1983) (inmates may have prison administrative determinations reviewed by state courts whether or not a constitutionally protected interest is at stake); *Greene v. Sec. of Public Safety and Correctional Services*, 68 Md.App. 147, 520 A.2d 613 (1985) (prison administrative grievance determinations reviewed under a substantial evidence test); *In re Wilson*, 202 Cal.App.3d 661 (1988) (prison classification designation reviewed); *In re Lamb*, 296 N.E.2d 280 (Ohio 1973) (evidentiary hearing required before prisoner can be placed in segregation); *Prock v. District Court of Pittsburg Co.*, 630 P.2d 772 (Okl. 1981) (inmates in segregation pending disciplinary determinations are entitled to weekly review of a pending investigation); *LaFaso v. Patrissi*, 161 Vt. 46, 633 A.2d 695 (1993) (prison officials conducting disciplinary hearings are required to apply a preponderance of the evidence standard to determine guilt). An exhaustive discussion of the diligence of the New York state courts review of prison disciplinary decisions can be found in Hotvet, State Court Precedent with Respect to Prison Disciplinary Determinations (8th Ed. 1995).

There is also abundant authority that shows the States protect the constitutional measure of process to be afforded prisoners in disciplinary hearings. *See, e.g., People v. Superior Court*, 230 Cal.App.3d 1592, 1595, 281 Cal.Rptr. 900, 902 (1991); (court directed prison officials to re-conduct a prison disciplinary hearing based upon the inmate's "right to be heard by an impartial disciplinary committee); *Manos v. Harter*, 104 Ohio App.3d 430, 432, 662 N.E.2d 386, 388 (1995) (the prison disciplinary committee may not consist of persons who investigated the case against the inmate or those who have pre-existing biases or opinions that would prevent them from deciding the case in an impartial manner); *Weiss v. Coughlin*, 199 A.D.2d 638, 639, 604 N.Y.S.2d 654, 655-56 (App. Div. 1993) (the failure to allow inmate to be present at disciplinary hearing and to call witnesses violated the inmate's due process rights); *see*, *Rosario v. Selsky*, 169 A.D.2d 955, 564 N.Y.S.2d 851 (App. Div. 1991) (denial of due process not to advise the prisoner that informant identified him from photo line-up because line-up could have been used by the prisoner in his defense).[2/]

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2. *See also Hrbek v. State*, 478 N.W.2d 617, 619 (Iowa 1991); *Department of Corrections v. Marshall*, 618 So.2d 777 (Fla. 1993) ("failure to offer a valid reason for not calling witness gave the trial court sufficient cause to grant petition for writ of mandamus"); *Dumas v. State*, 654 So.2d 48, 49 (Ala. 1994) (reversal of prison disciplinary hearing where inmate was not afforded a qualified right to call witnesses); *Abraska v. Alaska Dept. of Corrections*, 902 P.2d 319, 321 (Alaska 1995) (refusal to allow inmate to call other inmates to testify and to have accusing staff member questioned at the hearing violated the inmate's due process rights).

All the states have administrative schemes that allow prisoners to challenge prison practices or policies.[3] These procedures typically provide the right

3. The States' regulations affording administrative appeals procedures to state prisoners are reported at: Ala. Dep't of Corrections, Admin. Reg. § 403 (1992); Alaska Dep't of Corrections, 22 AAC § 05.480 (1987); Ariz. Dep't of Corrections, IMP 103.31 (1994); Ark. Dep't of Corrections, Admin. Reg. § 831 (1990); Cal. Code Regs. Tit. 15 §§ 3084, *et seq.* and 3315(g) (1993); Colo. Dep't of Corrections, Code of Penal Discipline, § 203-1 (1984); Conn. Dep't of Correction, Admin. Directive No. 9.5 (1994); Del. Bureau of Prisons, Proc. Man., CH. 4 (1992); Fla. Dep't of Corrections Rules, Ch. 33-22 (1986), as amended, Ch. 33-29 (1992); Ga. Dep't of Corrections, Standard Operating Procedures, IIB02-0001 (1992); Haw. Admin. Reg. § 17-201-20 (1983); Idaho Dep't of Corrections, Policy & Proc. Man. § 318-C (1987); Ill. Dep't of Corrections, Tit. 20, Ch. 1: Subch. e, Rule 504F (1988); Ind. Dep't of Corrections, Admin. Proc. Man. of Policies & Proc., 02-04-101 (1994); Iowa Div. of Institutions, Dep't Policy & Proc. IN-V-36 (1984; Kan. Admin. Reg. Art. 44-13-701-44-13-707 (1992); Ky. Corrections Policies & Proc. § 15.6 (1992); La. Dep't of Public Safety & Corrections, Disciplinary Rules and Proc. for Adult Inmates (1st Ed. 1993)(Approved La. R.S. 15:1171 *et seq.*; Me. Dep't of Corrections, Client Disciplinary Procedures, CH. 15.1 (1994); Md. Div. of Corrections Reg., DCR No. 105-2 (1988); 103 Com. Mass. Reg. 430.00, 430.18, 430.19 & 430.22 (1992); Mich. Dep't of Corrections, Policy Directive, 03.03.105 (1994); Minn. Dep't of Corrections, Policy & Proc. - Discipline Plan (1988), and Inmate Discipline Reg. (1993); Miss. Dep't of Corrections, Administrative Remedy Program (1994); Mo. Dep't of Corrections and Human Resources, Institutional Services Policy and Proc. Man., IS8-2.1 (1992), IS19-1.3 and IS19-1.4 (1994); Mont. Dep't of Corrections, Policy Statement, Inmate Grievance Procedure MSP 14-003 (Jan. 1993); Neb. Dep't of Correctional Services, Title 68, Ch. 6 (1994), Nev. Dep't of Prisons, Code of Penal Discipline (1993); N.H. Dep't of Corrections Policy and Proc. Directive, Enforcement OP. Statement No. 1.5.25 (1993); N.J. Admin. Code Tit. 10A, Subch. 11 (1994); N.M. Corrections Department, Inmate Discipline Reg. CD-090301 (1991), and Inmate Discipline for Minimum and Minimum Restrict Custody Facilities, CD-0-0101 (1992); N.Y. Comp. Code R. & Regs. Tit. 7 §§ 253.8, 254.8 (1983); N.C. Div. of Prisons, Policies & Proc. §§ .0200.0204

to administratively challenge any policy or procedure adversely affecting conditions of confinement, allow for automatic administrative review, and mandate periods within which appeals must be decided. With the exception of six States (Indiana, Maryland, Michigan, Oklahoma, Utah, and West Virginia), all States provided directives requiring a response to inmate administrative appeals within 60 days.[4] Fourteen states also have provisions that suspend, during the administrative appeal process, any penalties or sanctions that are imposed on an inmate.[5]

(1994); N.D. Dep't of Corrections & Rehabilitation Policies & Proc. Man. (Inmate Rules and Discipline) (1994); Ohio Dep't of Rehabilitation and Correction, Inmate Disciplinary Manual, OAC Rule 5120-9-09 (K)-(M) (1993); Okla. Dep't of Corrections, Policy & Operations Manual: Classification and Case Management Disciplinary Procedures OP-060125 (1993); Or Admin. R. 291-105-073 (1993); Pa. Dep't of Corrections, Inmate Disciplinary & Restricted Housing Procedures, DC-ADM 801 (1992); R.I. (by order in *Morris v. Travisono*, 499 F. Supp. 149 (1980)); S.C. Dep't of Corrections, Inmate Disciplinary Hearings § 1500.24 (15/24) (1994); S.D. State Penitentiary, R & Discipline 3C.3 (Prop. Draft); Tenn. Dep't of Corrections, Admin. Policies & Proc. § 502.01 (1993); Tex. Institutional Div., Disciplinary Rules and Procedures for Inmates (1993); Utah Dep't of Corrections, Disciplinary Due Process Proc. FDR 01/05.00 (1994); VT. Dep't of Corrections, Inmate Disc. (1021), Policy # 410 (1991); Va. Dep't of Corrections, Div. of Adult Institutions Operating Proc. 861 (1992); Was. Div. of Prisons, Div. Directive, DOP 461 (1991); W.V. Dep't of Corrections, Policy Directive § 670.00 (1991); Wis. Div. of Adult Institutions Rules of Department of Corrections 303.75, 303.76 (1990); Wyo. Dep't of Corrections, Code of Inmate Discipline (1994).

4. In Alabama, the entire process cannot exceed 60 days, while Wisconsin does not provide a deadline for minor offenses, and Indiana merely requires a response "in a timely manner." Many States provide for review in periods shorter than 60 days.

5. Three States (Alaska, Delaware, and Maine) stay all punishment until the administrative appeal process is completed;

Statistics pertaining to administrative remedies, as reported by the States, indicate that between seven and twenty one percent of administrative appeals pursued to the highest levels of review result in modification or reversal of the charge.[5] A recent study of section 1983 litigation filed by prisoners indicates that 94% of all prisoner cases are dismissed by courts on their own motion, or the motion of a defendant; 4% of the cases are dismissed by stipulation; and 2% result in a verdict. R. Hanson & H. Daley, Challenging the Conditions of Prisons and Jails, A Report on Section

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one state (Iowa) suspends punishment through appeal to the prison warden; five States (Minnesota, New Jersey, Rhode Island, Tennessee, and Washington) require approval to suspend sanctions; three States (Kansas, Massachusetts (isolation only), and North Dakota (loss of good time only) suspend certain sanctions pending appeal.

6. Statistics compiled by California's Department of Corrections for the period July 1, 1994 through June 30, 1995, indicate 50% of the appeals received were granted or partially granted at the lowest level of review, 29% were granted or partially granted at the intermediate level of review, and 7% were granted or partially granted at the final level of review. California Department of Corrections, Inmate Appeal Activity, Annual Report, Fiscal Year 94/95. Other states provided the following information pertaining to their state administrative processes: In Oklahoma, from May 1995 through May 1996, 17% of the inmate disciplinary hearings challenged by administrative appeal were reversed or remanded for rehearing. Prisoners were successful in 15% of the appeals filed in New Hampshire in 1995 and 1996. New Mexico reports 13% of the inmate classification appeals filed in 1995, and 9% of those filed in 1996 were successful. In New York, 1995 statistics for the Special Housing/Inmate Disciplinary Program indicate a success rate of approximately 21% of the disciplinary determinations challenged by inmate appeal. Statistics compiled over the last eight months by the Texas Department of Corrections show a success rate of 10% of all appeals filed. Wyoming reports that approximately 10.8% of the appeals filed are granted in whole or in part.

Conditions of Prisons and Jails, A Report on Section 1983 Litigation, at 19 (1995). The administrative remedies provided by the states are a meaningful and expedient remedy to challenge erroneous determinations by prison administrators, and this Court should have no hesitance in establishing a rule that requires prisoners to redress grievances through state administrative and judicial channels before coming into federal court.

This Court has held that the legislative history of the Civil Rights Act indicates that "Congress did not intend that an individual be compelled in every case to exhaust administrative remedies before filing" a Civil Rights Action. *Patsy v. Board of Regents of State of Florida*, 457 U.S. 496, 507 (1982). However, in *Patsy*, the Court also recognized that inmate claims are different. The Court recognized that the exhaustion requirement in the Civil Rights of Institutionalized Persons Act (CRIPA), 42 U.S.C. § 1997e, for prisoner cases "carves out a narrow exception to the general no-exhaustion rule to govern certain prisoner claims, and establishes a procedure to ensure that the administrative remedies are adequate and effective." *Patsy v. Board of Regents of State of Florida* 457 U.S. at 510.

The "narrow exception" recognized in *Patsy*, has recently been expanded by Congress. The Prison Litigation Reform Act, signed into law by the President on April 26, 1996, requires inmates to exhaust state administrative remedies before bringing any section 1983 claim, and no longer limits the exhaustion requirement to those states whose administrative appeal processes have been certified under CRIPA. 42 U.S.C. § 1997e(a) (as amended April 26, 1996). This greater deference to state administrative remedies required by the Prison Litigation Reform Act, reflects an appreciation on the part of Congress that state administrative remedies pose a faster and more efficient way of addressing inmate

claims than federal litigation, and present an expedient method of dealing with inmate complaints that frequently lack merit. H.R. Rep. No. 21, 104th Cong. 1st Sess., at 13 (1995); 141 Cong. Rec. S5150 (daily ed. April 4, 1995) (Statement of Sen. Hatch); 141 Cong. Rec. S7526 (May 25, 1995) (Statement of Sen. Dole); 141 Cong. Rec. S14611 (Sept. 25, 1995) (Statement of Sen. Dole).[7]

The States offer remedial schemes that are capable of enforcing the constitution. All state prison systems operate elaborate administrative appeals processes that offer meaningful review of prisoner grievances. State courts also address prisoner claims and capably redress constitutional error. State courts also fashion rules in prisoner cases that may exceed those required by the constitution in order to adhere to state law or reach a just determination of a prisoner dispute. There is no basis for this Court to conclude that state remedies afforded to prisoners are ineffective or that state courts do not adequately protect constitutional rights.

7. In the area of prison administration, Congress no longer appears to have a mistrust for the "fact finding processes of state institutions" that was relied upon by the Court in reaching the no exhaustion rule announced in *Patsy*. *See*, *Patsy v. Board of Regents of State of Florida*, 457 U.S. at 504; Schwartz, The Preiser Puzzle: Continued Frustrating Conflict Between the Civil Rights and Habeas Corpus Remedies for State Prisoners, 37 De Paul L.Rev. 85, 98 (1988).

II.

FEDERAL HABEAS CORPUS IS THE PROPER REMEDY TO CORRECT PROCEDURAL OR SUBSTANTIVE DUE PROCESS ERRORS IN PRISON ADMINISTRATIVE HEARINGS.

In *Bell v. Wolfish*, 441 U.S. 520, 526-527 n.6 (1979), this Court left for another day whether the remedy of habeas corpus is available to obtain review of conditions of confinement, as distinct from the fact or length of the confinement itself. In contrast to this Court's statement in *Bell*, the weight of circuit court authority supports the use of habeas corpus by the lower federal courts to address prison condition claims rather than requiring that such actions be brought under § 1983. See, Schwartz, *supra*, at 150n.394.

The Amici States believe that one class of prisoner claims is most amenable to resolution in habeas corpus. When a prisoner challenges the outcome of a prison administrative proceeding on procedural or substantive due process grounds, his remedy is federal habeas corpus.[8] The relevant interest at stake in such cases concerns protection "not from the deprivation, but from the mistaken or unjustified deprivation of life, liberty or property." *Carey v. Piphus*, 435 U.S. 247, 259 (1978). The expedient correction of mistakes in the procedure or result in such cases should be the objective

8. In asserting this argument, the Amici States seek a broader rule than that advanced by the petitioners. Proceeding in habeas corpus is the proper remedy for all procedural on substantive due process claims filed by prisoners challenging administrative decisions, not just those involving credit losses. Moreover, as explained below, favorable termination of a prisoner's challenge to the prison administrative proceeding should be a prerequisite to a § 1983 damages claim.

of the primary remedy afforded to state prisoners, and a necessary prerequisite to the recovery of damages.

The reason why habeas corpus should be the means for prisoners to correct errors of procedural or substantive due process, derives partly from the nature of liberty interests that are protected in a prison context. In *Sandin v. Conner*, ___ U.S. ___, 115 S.Ct. 2293 (1995), this Court moved away from determining whether or not states create constitutionally protected liberty interests by using mandatory language in their regulations, and returned to determining whether or not state-conferred privileges affected interests of sufficient weight to merit due process protection. A protected state-created liberty interest is an interest "generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, . . . nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life." *Sandin v. Conner*, 115 S.Ct. at 2300. A challenge to a prison practice that presents "such a dramatic departure from the basic conditions" of a prisoner's confinement as to be protected by the Due Process clause, should properly fall within the scope of habeas corpus. *Sandin v. Connor*, 115 S.Ct. at 2301. Habeas corpus is the proper means to seek release from unlawful physical restraint. *Preiser v. Rodriguez*, 411 U.S. at 485-486.

Established principles of tort law also compel the conclusion that federal habeas corpus is the proper remedy for prisoners seeking to challenge administrative determinations under the Due Process Clause, and a prerequisite to a claim for damages under § 1983. "In order to further the purpose of § 1983, the rules governing compensation for injuries caused by the deprivation of constitutional rights should be tailored to the interests protected by the particular right in question

- just as the common-law rules of damages themselves were defined by the interests protected in the various branches of tort law." *Carey v. Piphus*, 435 U.S. at 258-259. In cases like this one, the interest sought to be protected is the unjustified deprivation of liberty. *Carey v. Piphus*, 435 U.S. at 259. That interest is best served through the swift and summary nature of habeas corpus, rather than a plenary civil rights action filed under § 1983. See, *Preiser v. Rodriguez*, 411 U.S. at 495-496.[9]

Although prison administrative proceedings are not criminal prosecutions, *Wolff v. McDonnell*, 418 U.S. 539, 556 (1979), see *Cleavenger v. Saxner*, 474 U.S. 193, 206 (1986), the analogy to the tort of malicious prosecution applied in *Heck v. Humphrey*, 512 U.S. ___, 114 S.Ct. 2364, 2371 (1994), applies with equal force in this case. The interest to be compensated in a due process damages claim and a tort action for malicious prosecution is the same one. Both the constitutional tort and its common law counterpart are intended to compensate harm caused by defective process. Malicious prosecution extends to administrative proceedings and the action is bounded essentially by the same rules and limitations that apply if the underlying action is a criminal proceeding, including favorable termination. Prosser and Keeton, Torts 5th Ed., § 120 pgs. 891-893

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9. Requiring the favorable termination of a procedural or substantive due process challenge to a prison administrative hearing before a § 1983 claim will lie, also prevents prisoners from circumventing the most efficacious remedy available to challenge a deprivation of liberty. Prisoners should not be placed in the situation of waiting for effective relief because they put the wrong label on their pleadings. See, *Preiser v. Rodriguez*, 411 U.S. at 489-490. Similarly, an exhaustion requirement will have the salutary effect of mitigating any harm caused by an unlawful deprivation of liberty by requiring them to pursue relief through a summary proceeding.

(1985); see *Melvin v. Pence*, 130 F.2d 423 (D.C. Cir. 1942).

Just as in *Heck*, prisoners challenging administrative proceedings that impact a liberty interest on due process grounds are seeking damages for confinement imposed following a legal process. *Heck*, 114 S.Ct. at 2371. The requirement that prisoners must successfully proceed in habeas corpus to challenge the results of administrative hearings before suing for damages also avoids the possibility of conflicting resolutions arising out of the same transaction. *Heck*, 114 S.Ct. at 2371. Finally, a rule that favorable termination of a challenge to prison administrative hearings is a prerequisite to a § 1983 action for damages incurred as a result of those proceedings avoids troubling statute of limitation questions. *Heck*, 114 S.Ct. at 2373.

It also cannot be assumed that an action for damages will necessarily ensue after a successful challenge to a prison administrative hearing in a state or federal forum. In *Heck*, the Court opined that a § 1983 claim for using the wrong procedures could be distinguished from a claim challenging a wrong result that must proceed by habeas. *Heck*, 114 S.Ct. at 2370 (distinguishing *Wolff v. McDonnell*, 418 U.S. 539). However, a claim challenging the procedure employed in a particular hearing, necessarily sets aside the result of that proceeding, if only temporarily pending a rehearing. See, e.g., *Raditch v. U.S.*, 929 F.2d 478, 481 (9th Cir. 1991) ("A violation of procedural rights requires only a procedural correction, not the reinstatement of a substantive right to which the claimant may not be entitled on the merits."). The procedural guidelines for prison disciplinary cases announced in *Wolff* do not lend themselves to the predetermination that a violation of *Wolff* procedures will or will not affect the outcome of a prison hearing. Hence, the distinction between a

challenge to procedure and a challenge to a result does not provide a workable rule. Moreover, even in cases that find a procedural due process violation, habeas corpus may provide complete relief.

In *Carey v. Piphus*, 435 U.S. at 260, the Court recognized that if a procedural due process error is harmless, and later proceedings produce the same result as the flawed hearing, a claim for damages for injuries caused by the original determination would not lie. Any award in such circumstances would constitute a windfall, rather than compensation to the aggrieved party. Similarly, where a party cannot prove that they suffered actual injury as a result of a procedural due process violation, only nominal damages will lie. *Carey v. Piphus* 435 U.S. at 266. In both types of cases, the remedy of habeas corpus will provide adequate relief by correcting the error in the underlying proceedings, and § 1983 actions for damages should not ensue because the offended constitutional right will be vindicated. Damages cases should only follow when the error in the proceeding caused actual injury to the plaintiff. *Carey v. Piphus*, 435 U.S. at 266-267.[10]

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10. As this Court observed in *Olim v. Wakinekona*, 461 U.S. 238, 250 (1983), a liberty interest is substantive, and is not the right to demand needless formality. "Process is not an end in itself. Its constitutional purpose is to protect a substantive interest to which the individual has a legitimate claim of entitlement." *Id.* In prisoner cases of harmless error, the Court could properly conclude that no damage action accrues in the absence of actual harm. "It is the role of courts to provide relief to claimants, in individual or class actions, who have suffered, or will imminently suffer, actual harm; it is not the role of courts, but that of the political branches, to shape the institutions of government in such fashion as to comply with the laws and the Constitution." *Lewis v. Casey*, ___ U.S. ___ (1996) (U.S. LEXIS 4220 (1996)).

In *Allen v. McCurry*, 449 U.S. 90, 105 n.24 (1980), the Court stated that habeas corpus and § 1983 suits should not be fungible remedies. Indeed they are not, and it should clearly be stated that when an action must be brought under 28 U.S.C. § 2254 it is not at the same time cognizable under § 1983.[11] A clear rule on the distinct nature of these claims will eliminate uncertainty and the potential harsh consequences that may befall litigants who chose the wrong form of action. Compare, *Silverton v. Dept. of the Treasury*, 644 F.2d 1341 (9th Cir. 1981) (plaintiff foreclosed in a § 1983 action from re-litigating an issue lost in state habeas corpus), and *Young v. Kenny*, 907 F.2d 874 (9th Cir. 1990) (civil rights action should be stayed, not dismissed, so plaintiff could exhaust state remedy). When a prisoner challenges an administrative proceeding on due process grounds, the immediate federal action is one for habeas corpus, and it is the nature of the prisoner's claim, not the relief a prisoner seeks, that compels that determination. Only if a challenge to a prison administrative proceeding terminates in favor of a prisoner, and the prisoner suffers actual harm, should a damages claim be filed under § 1983.[12] But cf. *Wolff v. McDonnell*, 418 U.S. at 554-

11. Any such rule would not undermine the cases that state the same constitutional rights can be redressed under either form of relief. *Wolff v. McDonnell*, 418 U.S. at 579. Rather, the "demarcation line" in cases would require correction of constitutional error in a state or federal forum before a damages claim to redress the same constitutional right would arise under § 1983.

12. Although the proper federal remedy to correct error in a prison administrative hearing is habeas corpus, the favorable termination requirement should be imposed as a prerequisite to a damages claim even if this Court determines such challenges need not proceed by habeas corpus.

555 (§ 1983 could go forward while restoration of good time sought in state proceedings).

III.

A HOLDING THAT PRISON ADMINISTRATIVE PROCEEDINGS MUST BE FOUND INVALID BEFORE A PRISONERS' PROCEDURAL OR SUBSTANTIVE DUE PROCESS CLAIM FOR DAMAGES ACCRUES UNDER THE CIVIL RIGHTS ACT STRIKES A PROPER BALANCE BETWEEN THE RIGHTS OF THE STATES AND THE RIGHTS OF AGGRIEVED PRISONERS.

Principles of comity and federalism require that the states be afforded the opportunity to correct errors of constitutional significance in state prison administrative hearings. All the states have grievance procedures available to state prisoners, and state courts provide a meaningful forum for prisoner disputes.

The remedy of habeas corpus is a swift and summary means of adjudicating prisoner claims, and is particularly suitable for correcting error in procedures that result in the deprivation of constitutionally protected liberty. A rule requiring prisoners to exhaust state remedies will have the effect of quickly resolving due process claims. Prisoners will benefit by achieving meaningful relief faster than they would in a regular plenary action, and the states and federal courts will be saved the attendant burden and expense of a plenary federal proceeding.[13]

13. In recent years, the federal courts have been burdened with an explosion of prisoner litigation, much of it is recreational and without merit, and serves no purpose other than to disrupt the fair and orderly allocation of judicial resources. *See*, *Young v. Selsky*, 41 F.3d 47, 54-56 (2d Cir. 1994) (Van Graffeiland dissenting) *cert. denied*, ___ U.S. ___, 115 S.Ct. 1837 (1995). When the Administrative Office of the U.S. Courts began tracking state prisoner civil rights cases in 1966, 218 cases were counted nationally. By 1992 the number climbed to 26,824. R. Hanson & Daly, *supra*, at 2.

In cases of harmless error, or where a prisoner has suffered no actual harm as a result of a procedural due process violation, habeas corpus may afford the prisoner complete relief. In other cases, the requirement that a prisoner exhaust available state remedies ensures the states that conflicting results will not arise from the same transactions. An exhaustion rule also provides certainty for statute of limitation purposes.

Approximately half of all prisoner cases that enter the federal court system "concern matters that could and probably should be handled through state administrative procedures." R. Hanson and H. Daly, *supra*, at 39. "Prisoners' grievances need to be channeled to other forms of relief, such as habeas corpus, ... These other forms of resolution might be more satisfying to the prisoner while embracing the ability of the courts to deal with the more serious cases involving the more difficult task of establishing credibility and liability." *Id.* at 39-40.

A holding that a claim for damages for a due process violation accrues to a state prisoner only after an administrative proceeding has been held invalid may result in delay of a prisoner's opportunity to seek damages from prison officials, but is outweighed by other considerations of federalism, fairness and judicial economy.

CONCLUSION

For the reasons stated above, in the Petition for Writ of Certiorari, and in the Brief for the Petitioner's, the decision of the Ninth Circuit should be reversed, and prisoners challenging administrative hearings should be required to exhaust state remedies, proceed in habeas corpus, and obtain a favorable termination before seeking damages for due process violations under 42 U.S.C. § 1983.

Respectfully submitted,

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